lyondellbasell ORIGINAL

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September 6, 2013

Mr. Christopher Sklaney
Remedial Project Manager (3HS21)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: ***Response to Notice of Potential Liability Regarding the Metro Container Site, Trainer, Delaware County, Pennsylvania***

Dear Mr. Sklaney:

Provided herein is Lyondell Chemical Company's ("Lyondell's") response to your letter dated August 20, 2013 and received August 29, 2013.

On March 9, 2012, United States Environmental Protection Agency Region III ("EPA") sent Lyondell Chemical Worldwide, Incorporated and ARCO Chemical a request for information under Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e). On April 11, 2012, Lyondell responded with two letters. In the first letter, Lyondell provided the requested information responsive to the CERCLA information request, and also provided the legal relationship between Lyondell, ARCO Chemical Company, and Lyondell Chemical Worldwide, Inc. (See Attachment 1. Please note that Appendix B to Attachment 1 is not included, but is available upon request.) In the second April 11, 2012 letter, Lyondell provided information pertaining to Lyondell's emergence from bankruptcy and detailed options available to EPA for recovery of response costs under the terms of the bankruptcy and the settlement agreement between Lyondell and the United States (see Attachment 2).

In summary, under the terms of the Settlement Agreement and Discharge Injunction, EPA may pursue cost recovery for the Metro Container Site to the extent funds (a Discharge Amount) are available under the Reorganization Plan. Lyondell would welcome further discussion with EPA on details of the bankruptcy, Settlement Agreement, and access to funds under the Reorganization Plan. However, please note that once funds set aside under the Reorganization Plan are exhausted, no further funds will be available. For ease of reference, the details provided in the prior response

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letter of April 11, 2012 have been once again been provided below.

Your letter also requests an indication of whether Lyondell is willing to conduct response actions at the Site pursuant to "agreements". Given Lyondell's status with respect to the Site under the bankruptcy and Settlement Agreement as detailed herein, Lyondell is unwilling to conduct response actions at the Site pursuant to an agreement.

**A. Bankruptcy Details and Terms of the Settlement Agreement with the United States**

**1. Background**

Lyondell and certain of its affiliated entities (collectively, the "Reorganized Debtors," or during the chapter 11 cases, the "Debtors") filed for bankruptcy protection under chapter 11, title 11 of the United States Code (the "Bankruptcy Code") on January 6, 2009, in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under the caption In re Lyondell Chemical Co., et al., Case No. 09-10023 (REG) (jointly administered). On or about January 7, 2009, the Debtors served a Notice of Commencement of Chapter 11 Cases and First Day Motions on the United States.

On or about May 27, 2009, the Debtors served an amended notice of the bar date requiring filing of proofs of claim by June 30, 2009 on the United States. The United States on behalf of the U.S. Environmental Protection Agency ("EPA"), the United States Department of Interior, and the National Oceanic and Atmospheric Administration filed proofs of claim (Claim Nos. 11940, 11941, 12968, 12969, 12970, 12971, 12972, 12973, 12974, and 279491) against the Debtors. In March, 2010 the Debtors entered into a Settlement Agreement with the United States (*see*, Exhibit A, attached).

**2. Settlement Agreement**

The Metro Container Site (the "Site") was included within the terms of the Settlement Agreement and defined as a "U.S. Additional CERCLIS/NPL Sites" (*see*, Exhibit A, Settlement Agreement at Exhibit C, Item 4). Section XII of the Settlement Agreement addresses treatment of "Additional Sites", including the Site. Paragraph 24 of the Settlement Agreement discusses permissible enforcement activities undertaken by the "Settling Federal Agencies" (including the EPA) under the terms of the Settlement Agreement. This Paragraph provides that the EPA, "may seek to obtain a judgment of liability of the Debtor or enter into a settlement with the Debtor with regard to the Additional Site in the manner and before the administrative or judicial tribunal in which the Settling Federal Agencies' claims...would have been resolved or adjudicated if the Bankruptcy Cases had never been commenced." Paragraph 24 also provides that,

> "the Debtors and the Settling Federal Agencies...will attempt to settle each liability or obligation asserted by the Settling Federal Agencies...against any Debtor relating to an Additional Site on a basis that is fair and equitable under the circumstances, including consideration of (i) settlement proposals made to other potentially

> responsible parties who are similar to the Debtor in the nature of their involvement with the site, (ii) the fact of the Debtor's bankruptcy, and (iii) the circumstances of this Settlement Agreement; but nothing in this sentence shall create an obligation of the Settling Federal Agencies, DTSC, or the LA Regional Board that is subject to judicial review."

Finally, Paragraph 24 preserves all rights, claims and defenses available to the Debtors and the Settling Federal Agencies.

Paragraph 25 of the Settlement Agreement provides details on the funds available for resolution of claims brought under Paragraph 24. Under Paragraph 25, the Site is treated as follows:

> "In the event any liability is liquidated pursuant to Paragraph 24 by settlement or judgment to a determined amount (the "Determined Amount"), the Debtor(s) with which such settlement is made or against which such judgment is entered will satisfy such liability within thirty days after the later of the effective date of the Plan of Reorganization or the date on which the settlement or judgment is final and effective (the "Settlement/Judgment Date") as follows: (a) for DTSC Additional NPL Sites and U.S. Additional CERCLIS/NPL Sites, by providing DTSC or the respective Settling Federal Agency the "Distribution Amount" to the extent that any funds are available under the Plan of Reorganization, including any disputed claim reserve, to make distributions to holders of Allowed General Unsecured Claims against the Debtor(s) in question... The Distribution Amount shall be the value of the consideration which would have been distributed under the Plan of Reorganization to the holder of such Claim if the Determined Amount had been an Allowed General Unsecured Claim in such amount under the Plan of Reorganization."

Therefore, under Paragraph 25 the EPA is entitled to a "Distribution Amount" to the extent that any funds are available under the Reorganization Plan (detailed below in Part 3). When the funds under the Reorganization Plan are spent, no additional funds will be available.

### 3. Bankruptcy Exit and Reorganization Plan

On April 23, 2010, the Bankruptcy Court entered an order [Docket No. 4418] (the "Confirmation Order," confirming the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization for the LyondellBasell Debtors (the "Reorganization Plan") and on April 30, 2010 (the "Effective Date"), the Reorganized Debtors emerged from bankruptcy.

Under the Bankruptcy Code, the Bankruptcy Court's confirmation of a plan of reorganization provides a "discharge" to a debtor, regardless of whether the creditor filed a proof of claim. The discharge extinguishes all debts and claims arising against a debtor that arose prior to confirmation. Section 1141(d) (1) of the Bankruptcy Code states: "the confirmation of a plan . . . discharges the debtor from any debt that arose before the date of such confirmation." 11 U.S.C. § 1141(d)(1). Concurrently, section 524(a)(2) of the Bankruptcy Code provides that this discharge

"operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt . . . ." 11 U.S.C. § 524(a)(2); see also Kuhl v. United States, 467 F.3d 145, 147 (2d Cir. 2006) ("A discharge in bankruptcy operates as an injunction against collection of any discharged debts.").

The terms of the Settlement Agreement, provisions of the Bankruptcy Code, Section 11.5 of the Reorganization Plan and Section 35 of the Confirmation Order discharged and terminated all existing debts and claims, of any kind, nature or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by the Settlement Agreement and the Bankruptcy Code, and permanently enjoined and forbade the pursuit of such discharged claims. Please take notice that the automatic stay of section 362 of the Bankruptcy Code was replaced on the Effective Date by the discharge and permanent injunction found in the Confirmation Order, Section 11.5 of the Plan and sections 1141(d) and 524(a) of the Bankruptcy Code (such provisions, collectively, the "Discharge Injunction").

If additional information is needed, please contact me at 713.309.4629.

Respectfully submitted,

LYONDELL CHEMICAL COMPANY

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**Attachments:**

Attachment 1 – April 11, 2012 Response to CERCLA 104(e) request
Attachment 2 – April 11, 2012 Notification regarding Lyondell's emergence from bankruptcy

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